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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,537	12/19/2003	Bruce Douglas Spangrud	OUTKC.0001P	5139

32856 7590 02/28/2007  
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LAS VEGAS, NV 89128

EXAMINER
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COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/741,537

Applicant(s)

SPANGRUD, BRUCE DOUGLAS

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15, 16 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 32-41 is/are allowed.
- 6) ☒ Claim(s) 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/1/2006 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by German Patent DE 297 20 168 U1 ("DE '168") (previously cited).

Initially, it is noted that an English translation of DE '168 has been obtained and is included with this Office action. This translation was requested through the Scientific and Technical Information Center ("STIC") at the USPTO and was translated in a document from Schreiber Translations, Inc. dated September 2006. References to page and line numbers refer to the translated document.

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DE '168 discloses in the description and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and as described in applicant's claim 15. In particular, DE '168 shows a burner (any of 10, 11, or 12) for a grill unit including a generally U-shaped burner conduit (see at least Fig. 1 and tubes/legs 14 and 15 and end segment of the ignition pipe 39 connecting them). These tubes/legs (14, 15) of burner (10) are considered the recited first and second legs spaced from one another and include a plurality of apertures (42). The burner further includes a central gas delivery conduit/gas supply pipe (16) defining first and second arms/gas feeder pipes (17) that connect the pair of tubes/legs (14, 15) to form a closed gas delivery path and deliver gas solely to the first and second legs as recited in applicant's claim 15.

In regard to the recitation that the burner conduit is "generally 'U' shaped", as noted above the examiner considers that the shape of the burner conduit (at least legs 14, 15, and ignition pipe segment 39) shown in Fig. 1 of DE '168 is broadly considered to be "generally 'U' shaped" as recited.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 297 20 168 U1 ("DE '168") in view of U.S. Patent No. 6,176,173 to Holbrook et al. ("Holbrook").

DE '168 discloses substantially all the limitations of claim 16 (note discussion of the teachings of this reference above with respect to claim 15 above) except for a diverter plate as described.

Holbrook teaches a burner in the same field of endeavor as both applicant's invention and DE '168. In Holbrook, a U-shaped diverter plate (see Figs. 8 and 9) is arranged above a U-shaped burner conduit.

Therefore, in regard to claim 16, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner of DE '168 to incorporate the diverter plate of Holbrook as this plate desirably functions to provide even heat distribution and prevent flames from directly impinging upon food being cooked above the burner (see Holbrook, col. 6, lines 13-54).

***Allowable Subject Matter***

6. Claims 32-41 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: In regard to claim 32, applicant's arguments filed 12/1/2006 have been carefully considered and are found persuasive. Accordingly, in light of the record taken as a whole, including these arguments, the prior art is not considered to disclose, teach, or suggest the burner for a grill having the combination of structural elements as recited in claim 32 including that the burner

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conduit is generally "U" shaped having a first and second leg with a curved connecting portion wherein gas is supplied to the first and second legs of the burner conduit solely through the first and second arms of a central gas flow passage as recited.

Claims 33-41 are allowable as being dependent, either directly, upon allowable claim 32.

### *Response to Arguments*

7. Applicant's arguments filed 12/1/2006 as to claims 15 and 16 have been fully considered but they are not persuasive.

Regarding the declaration submitted under 37 CFR 1.132 by Bruce Douglas Spangrud ("Spangrud declaration"), this declaration filed 12/1/2006 is insufficient to overcome the rejection of claim 15 based upon German Patent DE 297 20 168 U1 ("DE '168"). DE '168 has been applied under 35 USC 102(b) as anticipating applicant's invention. As noted above, the shape of the burners (10, 11, and/or 12) in DE '168 are considered to be "generally 'U' shaped" as recited by applicant resulting in all the claimed elements of applicant's claim 15 being present in DE '168. Accordingly, applicant's submission of a secondary evidence in the form of the Spangrud declaration to overcome an assertion of obviousness, has been considered, but is insufficient to overcome the anticipation rejection of claim 15 presented by the examiner.

Regarding claim 16, this claim has been rejected under 35 USC 103(a) as being obvious over DE '168 in view of Holbrook. However, the Spangrud declaration provides no evidence to suggest that the diverter plate of Holbrook would not be reasonably incorporated into the burner of DE '168. It has been held that "to be of probative value, any secondary evidence must be related to the claimed invention (nexus required)" (see MPEP 716.01(b)). Further, the term

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“nexus” designates a factually and legally sufficient connection between the objective evidence of nonobviousness and the claimed invention so that the evidence is of probative value in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir.), cert. denied, 488 U.S. 956 (1988). In this case, the Spangrud declaration, in providing no discussion of the Holbrook reference, is not considered to provide any “nexus” between the objective evidence of non-obviousness and the claimed invention of claim 16.

Regarding applicant’s arguments that applicant’s “claimed configuration is advantageous over configurations such as disclosed in DE ‘168, in that gas is evenly distributed to and along the lengths of, the legs of a single ‘U’ shaped burner” the examiner respectfully disagrees. As the burner of DE ‘168 is considered a “generally ‘U’ shaped” burner as recited, the distribution of gas at the midpoint of the legs (at least 14 and 15) in any identical fashion as that of applicant’s invention, would also produce the even gas distribution.

Accordingly, applicant’s claims 15 and 16 are not considered to patentably distinguish applicant’s invention over the prior art of record.

### ***Conclusion***

8. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Rinehart can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc  
February 26, 2007

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749